

**BEFORE THE
NEBRASKA PUBLIC SERVICE COMMISSION**

In the Matter of the Commission on its own)	
Motion Seeking to Establish an Interim Policy)	Docket No. C-3415
on Eligible Telecommunications Carriers (ETC))	
Standards)	
)	

COMMENTS OF SPRINT CORP.

Sprint Corporation, on behalf of its incumbent local exchange carrier operating company in Nebraska, United Telephone Company of the West d/b/a Sprint and its wireless division (consisting of SprintCom, Inc., Sprint Spectrum, L.P., and WirelessCo, L.P., d/b/a Sprint) (collectively, "Sprint") offers these comments in response to the Nebraska Public Service Commission's (the "Commission" or "NPSC") request for comments pursuant to its Order Opening Docket issued on May 4, 2005.

General Comments

Sprint participates in all aspects of federal and state universal service fund ("USF") support mechanisms. Sprint serves as rural incumbent local exchange carrier ("ILEC") as well as a major wireless carrier in the State of Nebraska. In many states, Sprint partakes of federal USF as both a wireline Eligible Telecommunications Carrier ("ETC") and a wireless competitive ETC ("CETC"). At the same time, Sprint is a net payor into the federal universal service fund, making contributions based on its local, wireless, and long distance operations that greatly exceed the support it receives from the federal fund. That combination of experiences undergirds Sprint's support for policies that will preserve service for end-users and ensure the long-term sustainability of USF while maintaining and enhancing the competitive neutrality of support mechanisms designed to increase the choices available to customers in high-cost areas.

Sprint believes wholeheartedly that consumers in all areas are best served by vibrant intermodal competition, and that consumers are in the best position to make choices about the advantages and disadvantages of particular universal service offerings. That basic truth about the general efficiency of market-based solutions, coupled with the statutory and judicial mandate that USF funding remain predictable, portable, and competitively neutral, should guide the course that the Commission will pursue in this rulemaking proceeding.

In particular, the Commission should rely on the principles of competitive and technological neutrality in its analysis of ETC designation decisions. These principles make good sense and good policy, and, just as importantly, are supported by federal and state laws. Section 254(b) of the Communications Act directs the Joint Board and the FCC to base universal service policies on the principles of universal access to telecommunications and information services reasonably comparable to services offered in high-density areas, ^{1/} and to implement specific and predictable federal and state support mechanisms. ^{2/}

The Communications Act and USF mechanisms are designed both to ensure universal service and promote competition in all parts of the country, including high-cost and rural areas. ^{3/} The federal courts have confirmed that the Communications Act mandates a competitively neutral funding system for USF programs, in which both incumbent and

^{1/} 47 U.S.C. § 254(b)(3).

^{2/} *Id.* § 254(b)(5).

^{3/} *See Federal-State Joint Board on Universal Service*, First Report and Order, 12 FCC Rcd 8776, ¶ 50 (1997) (“We believe these commenters present a false choice between competition and universal service. A principal purpose of section 254 is to create mechanisms that will sustain universal service as competition emerges. We expect that applying the policy of competitive neutrality will promote emerging technologies that, over time, may provide competitive alternatives in rural, insular, and high cost areas and thereby benefit rural consumers.”).

competitive ETCs receive portable support. ^{4/} The Commission should continue applying these principles pursuant to the policies enunciated in Revised Nebraska Statutes Section 86-102, which declares the policy of the State of Nebraska to “[p]romote diversity in the supply of telecommunications services and products in telecommunications markets throughout the state.” ^{5/}

The Federal Communications Commission’s (“FCC”) new standards for ETC designation and annual ETC certification adhere in some respects to the principles of competitive and technological neutrality. ^{6/} These new standards are mandatory for carriers obtaining an ETC designation from the FCC. As the *Report and Order* makes clear, however, state commissions are free to adopt the FCC’s recommendations as they see fit, consistent with the principles of Section 214(e) and Section 254 of the Communications Act. ^{7/} The Commission might profitably implement the FCC standards in some instances. However, the Commission should keep in mind that it need not, and should not adopt all of these recommendations as a whole. Rather, these recommendations constitute, in essence, a menu of options from which the Commission can choose in order to construct a consistent, competitively neutral process for

^{4/} See, e.g., *Alenco Communications v. FCC*, 201 F.3d 608, 622 (5th Cir. 2000) (“[P]ortability is not only consistent with [the statutory requirement of] predictability, but also is dictated by the principles of competitive neutrality and . . . 47 U.S.C. § 254(e).”). See also *id.* at 616 (“[T]he program must treat all market participants equally – for example, subsidies must be portable . . . so that the market, and not local or federal government regulators, determines who shall compete for and deliver services to customers. Again, this [portability] principle is made necessary not only by the economic realities of competitive markets but also by statute.”).

^{5/} RSN §86-102.

^{6/} See *Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, FCC 05-46, 20 FCC Rcd 6371 (2005) (“*Report and Order*”).

^{7/} 47 U.S.C. §§ 214(e), 254. See *Report and Order*, ¶ 61 (“We decline to mandate that state commissions adopt our requirements for ETC designations.”).

designation of ETCs in Nebraska, in furtherance of the principles enunciated in Section 214(e) and in the Revised Statutes of Nebraska, Section 86-102. [8/](#)

Specific Comments

Consistent with the general principles outlined above, Sprint offers the following comments in response to the Commission's request. Sprint's comments are organized to correspond to the order in which the proposed provisions are presented in the Commission's request for comments. [9/](#)

1. An eligible telecommunications carrier that receives federal universal service support shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.

Sprint clearly does not oppose the Commission's ensuring that funds received shall be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. [10/](#) However, Sprint also notes that Section 254(e) of the Communications Act, paraphrased above, does not limit the use of USF support to incremental capital expenditures designed to increase network coverage, signal strength, and capacity throughout a designated service area. As discussed below, the Commission should continue to recognize that other investments and expenditures do qualify for support, and should continue to allow both incumbents and CETCs to use support for operating expenses, depreciation costs for capital expenditures incurred in the past, and associated overhead attributable to the costs of supported facilities and services.

[8/](#) RSN §86-102 ("The legislature declares it is the policy of the state to . . . (4) Promote diversity in the supply of telecommunications services and products in telecommunications markets throughout the state; and (5) Promote fair competition in all Nebraska telecommunications markets in a manner consistent with the federal act.")

[9/](#) Sprint has preserved the wording, numbering, and ordering of the proposed guidelines set forth in the Commission's request for comments.

[10/](#) 47 U.S.C. § 254(e).

2. In order to be designated an eligible telecommunications carrier, a common carrier must:

a. Demonstrate that such designation is consistent with the public interest, convenience, and necessity, and, in the case of an area served by a rural telephone company, demonstrate that public interest will be met by an additional designation;

Sprint urges the NPSC to decline to follow the FCC’s recommendation to require ETC applicants in areas served exclusively by *non-rural* ILECs to make a specific “public interest” showing. ^{11/} Instead, the NPSC should adhere to the precedent previously set by the FCC’s Common Carrier Bureau, of concluding that, once a non-rural ETC applicant demonstrates that it has satisfied the statutory requirements of all ETCs, a carrier’s receipt of ETC status “is consistent *per se* with the public interest,” and additional public interest showing should not be necessary. ^{12/}

This approach is rooted in the statute itself, as well as the legislative history. Section 214(e)(2) of the Act (with respect to ETC designation by state commissions), and Section 214(e)(6) of the Act (with respect to ETC designation by the FCC) provide that regulators “*shall*” designate ETC applicants in *non-rural* ILEC areas. The same statutory provisions state that regulators “*may*” issue such designations in *rural* ILEC areas – but only if, before doing so, they “find that the designation is in the public interest.” The legislative history makes it clear that, in *non-rural* areas, the role of the regulatory review is to determine whether the applicant meets the statutory criteria; if it does, then the statutory requirements have been met and the regulator “shall” issue the designation. By contrast, the legislative history makes it clear

^{11/} Report and Order, ¶¶ 3, 42-43.

^{12/} Federal-State Joint Board on Universal Service, *Cellco Partnership d/b/a/ Bell Atlantic Mobile Petition for Designation as an Eligible Telecommunications Carrier*, 16 FCC Rcd 39, 45, ¶ 14 (Com. Car. Bur. 2000) (“*Cellco Delaware ETC Order*”).

that the statute requires the regulator to conduct an additional public interest inquiry in *rural* ILEC areas that does not apply in *non-rural* ILEC areas. ^{13/}

Given that the statute specifically requires an additional “public interest” finding for ETC applications in areas served by *rural*, but not *non-rural*, ILECs, it makes no sense to interpret the general language in the statute stating that all designations are to be “consistent with the public interest, convenience, and necessity” as requiring an additional showing in non-rural areas. Thus, the general “public interest, convenience, and necessity” language in the statute can only mean that, “[f]or those areas served by non-rural telephone companies, . . . designation of an additional ETC based upon a demonstration that the requesting carrier complies with the statutory eligibility obligations of section 214(e)(1) is consistent *per se* with the public interest.” ^{14/} In other words, Congress has already made the decision that, if a carrier has met the prescribed ETC criteria, then designation of that carrier as an ETC is in the “public interest, convenience, and necessity.” ^{15/} No *additional* public interest finding should be required.

b. Demonstrate that it will offer the services that are supported by federal universal service support mechanisms and section 254(c) of the Act, either using its own facilities or a combination of its own facilities and resale of another carrier’s services (including the services offered by another eligible telecommunications carrier);

^{13/} See *Telecommunications Act of 1996, Conference Report to Accompany S.652*, Rept. 104-458, 104th Cong., 2d Sess. (Jan. 31, 1996), at 141 (“If more than one common carrier that meets the requirements of new section 214(e)(1) requests designation as an eligible telecommunications carrier in a particular area, the State commission shall, in the case of areas not served by a rural telephone company, designate all such carriers as eligible. If the area for which a second carrier requests designation as an eligible telecommunications carrier is served by a rural telephone company, then the State commission may only designate an additional carrier as an eligible telecommunications carrier if the State commission first determines that such additional designation is in the public interest.”).

^{14/} *Cellco Delaware ETC Order*, 16 FCC Rcd at 45, ¶ 14.

^{15/} The phrase “public interest, convenience, and necessity” is a stock boilerplate phrase used elsewhere in Section 214 and in comparable state statutes regarding certifying carriers and permitting them to enter a market.

c. Demonstrate that it will advertise the availability of such services and the charges therefor using media of general distribution;

Sprint currently complies with the immediately preceding requirements and would have no objection to a Commission rule mirroring these FCC requirements.

d. Demonstrate that it is capable of providing and will continuously provide the services designated for support as defined in 47 C.F.R. Section 54.101;

Sprint currently complies with the immediately preceding requirements and would have no objection to the Commission's adoption of a state rule mirroring these FCC requirements.

e. Commit to provide service throughout its proposed designated service area to all customers making a reasonable request for service. Each applicant shall certify that it will:

i. Provide service on a timely basis to requesting customers within the applicant's service area where the applicant's network already passes the potential customer's premises; and

ii. Provide service within a reasonable period of time, if the potential customer is within the applicant's licensed service area but outside its existing network coverage, if service can be provided at reasonable cost by (a) modifying or replacing the requesting customer's equipment; (b) deploying a roof-mounted antenna or other equipment; (c) adjusting the nearest cell tower; (d) adjusting network or customer facilities; (e) reselling services from another carrier's facilities to provide service; or (f) employing, leasing or constructing an additional cell site, cell extender, repeater, or other similar equipment;

The new FCC standard announced in the *Report and Order* goes beyond simply requiring that an ETC applicant offer its services throughout the area for which it seeks designation. The new FCC standard requires an ETC applicant to commit to extending service to specific potential customers "[i]n those instances where a request comes from a potential customer within the applicant's licensed service area but outside its existing network coverage." ^{16/} An ETC's commitment to extend service "within a reasonable period of time" in

^{16/} *Report and Order*, ¶ 22.

such a situation is limited, however, to instances in which “service can be provided at reasonable cost” pursuant to one of six specific methods for extending service. ^{17/}

Sprint would not object to the Commission’s adoption of a state rule mirroring these FCC requirements, nor do we particularly recommend such an approach. The Commission could reasonably decide to continue to refrain from directing ETCs to provide service in a particular manner. Significantly, the new FCC standard is not a general directive to provide service in a particular manner. The FCC now requires ETC applicants to commit to extend service within a reasonable time in one of six ways – if and only if any of these methods are available to the ETC at reasonable cost – in the special circumstance of a request for service from a potential customer within the ETC’s designated service area. If the Commission were to adopt the “specific commitments” required by the FCC or any other specific methods for extending service to unserved customers, such commitments should be narrowly tailored to the same limited circumstances in which the FCC’s six specific commitments apply.

f. Submit a five-year plan that describes with specificity proposed improvements or upgrades to the applicant’s network on a wire center-by-wire center basis throughout its proposed designated service area. Each applicant shall demonstrate how signal quality, coverage, or capacity will improve due to the receipt of high-cost support; the projected start date and completion date for each improvement and the estimated amount of investment for each project that is funded by high-cost support; the specific geographic areas where the improvements will be made; and the estimated population that will be served as a result of the improvements. If an applicant believes that service improvements in a particular wire center are not needed, it must explain its basis for this determination and demonstrate how funding will otherwise be used to further the provision of supported services in that area;

The Commission should not adopt the unworkable 5-year plan requirement suggested in the *Report and Order*. From a business perspective, it is unrealistic for any entity operating in the dynamic market for telecommunications services and information services to

^{17/} *Id.*

make concrete plans with such a long time horizon. Virtually no one in the industry does so. Just as it would be difficult or impossible for any carrier to propose such a plan with any particularity, it would be difficult or impossible – not to mention time-consuming – for the Commission and its staff to evaluate such plans. Providing quality service that will satisfy customers’ changing needs virtually requires that any business plan be flexible and subject to modification, given the changes that are bound to occur in demand for services, market conditions, and technology over any five-year period.

Furthermore, it would violate the competitive neutrality principles discussed above if the Commission were to require such plans only for new entrants and CETC applicants but not for incumbent carriers or existing ETCs. The Commission should not require five-year plans of any ETC, however, as such plans are unworkable and likely to inhibit natural growth and changes in service to meet customer demand.

g. Demonstrate its ability to remain functional in emergency situations, including a demonstration that it has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations;

Sprint would not object to the Commission’s adoption of the back-up power and emergency function requirements outlined in the *Report and Order*, and takes no position on the definition of “emergency situation” or the obligation “to remain functional” during an emergency. Sprint notes, however, that the FCC requirements regarding ability to remain functional in an emergency are not necessary in this context, as these tests bear no direct relationship to the purposes of USF and duplicate obligations that carriers must already meet. The Commission should follow the FCC’s lead in rejecting a specific *eight-hour* back-up power requirement.

h. Demonstrate that it will satisfy applicable consumer protection and service quality standards;

Although the FCC did not adopt any single set of consumer protection standards, the *Report and Order* did state that, consistent with FCC ETC designation precedent, “a commitment to comply with the Cellular Telecommunications and Internet Association’s Consumer Code for Wireless Service will satisfy this requirement for a wireless ETC applicant.” ^{18/} Sprint proposes that the Commission recognize the sufficiency of the CTIA voluntary standards, just as the FCC and other state commissions have done. The Commission should also respect competitive neutrality principles and real differences between the economic realities faced by wireline and wireless carriers. Accordingly, the Commission should not automatically impose legacy ILEC consumer protection standards on wireless carriers.

i. Demonstrate that it offers a local usage plan comparable to the one offered by the incumbent LEC in the service areas for which it seeks designation;

The Commission should decline to follow the FCC’s recommendations regarding local usage requirements. Existing wireless offerings include usage bundles that consumers find compelling. Rather than imposing legacy rate structures on wireless carriers by regulation, the Commission should continue to encourage all competitive carriers to set their own rate structures in a way that appeals to consumers. A wireless carrier, for example, might satisfy local usage goals without the imposition of any additional regulatory requirements by offering innovative packages that include bundles of local and long-distance minutes.

It would make little or no sense for the Commission or the FCC to require wireless carriers to match wireline rate structures – just as it would make no sense to impose wireless rate structures on incumbent wireline providers. The mere suggestion that the Commission could require incumbent LECs to offer anytime minutes, extended calling areas, or national toll-free any-distance plans risks ignoring legitimate differences in customer preferences

^{18/} *Id.* at ¶ 28.

and differences in costs between wireless and wireline that characterize an efficient market. To do so reduces customer welfare and market efficiency for the sake of parity alone. The *Report and Order* recognizes the inherently local nature of typical existing wireless plans but still leaves open the possibility for an unwarranted case-by-case analysis of ETC applicant offerings. ^{19/} Wireless and wireline carriers work with very different network architectures and costs. Any requirement that wireless carriers adopt wireline rate structures would violate the principles of competitive neutrality for a number of reasons, including that wireless networks are more susceptible to usage-sensitive costs.

j. Certify to the Commission that the applicant acknowledges that the Commission may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.

It is unclear what advantages would result from requiring carriers to make an “acknowledgement” that they might be required to provide equal in the event that no other ETC is doing so. Section 332(c)(8) prohibits state commissions from imposing equal access requirements on commercial mobile radio service (“CMRS”) carriers. ^{20/} Sprint believes neither the FCC nor the state commissions should second-guess Congress’s judgment that, given the competition among CMRS carriers, “equal access” requirements would be counter-productive in the CMRS context. ^{21/}

^{19/} *Id.* at ¶ 33.

^{20/} 47 U.S.C. § 332(c)(8); *Petition of the State Independent Alliance and the Independent Telecommunications Group for a Declaratory Ruling that the Basic Universal Service Offering Provided by Western Wireless in Kansas is Subject to Regulation as Local Exchange Service*, 17 FCC Rcd 14802 (2002).

^{21/} *See Federal-State Joint Board on Universal Service*, Recommended Decision, 17 FCC Rcd 14095 (Joint Board 2002) (“*Definition of Universal Service RD*”), Separate Statement of Commissioner Kathleen Abernathy (“*Abernathy Equal Access Statement*”), at 38 (“In response to the Commission’s previous effort to impose equal access on CMRS carriers, Congress spoke loudly and clearly in opposition to such a requirement. We should be faithful to that plain statement of legislative intent, rather than seeking ways around it.”).

Moreover, as the FCC has found in the past, imposing equal access obligations on CMRS carriers through the guise of ETC criteria would “undercut local competition and reduce consumer choice.” ^{22/} Consumers benefit from the bundled local/long distance packages that wireless carriers introduced, and that wireline ILECs are now beginning to imitate. Imposing an equal access obligation on wireless ETCs would discourage such beneficial, pro-consumer offerings, and would move decidedly in the wrong direction. ^{23/}

3. In the case of an applicant seeking designation in an area served by a rural telephone company, the Commission will consider the benefits of increased consumer choice, and the unique advantages and disadvantages of the applicant’s service offering.

Sprint encourages the Commission to consider the benefits of increased consumer choice when considering an applicant’s ETC designation. In addition, as part of its public interest analysis for areas served by rural telephone companies, Sprint would expect the Commission to consider the unique advantages and disadvantages of the applicant’s service offering.

4. In instances where an eligible telecommunications carrier applicant seeks designation below the study area level of a rural telephone company, the Commission shall also conduct a creamskimming analysis.

Because rural companies have the option of disaggregating for federal universal service purposes, creamskimming is not a concern. Therefore, Sprint believes the Commission does not need to conduct a creamskimming analysis.

5. Any common carrier that has been designated by this Commission as an eligible telecommunications carrier must submit the information required by paragraph 009.02A6 and 009.02A7 of this section no later than October 1, 2006.

^{22/} *Federal-State Joint Board on Universal Service*, First Report and Order, 12 FCC Rcd 8776, 8820, ¶ 79 (1997).

^{23/} *See Abernathy Equal Access Statement* at 41 (“Looking at the telecommunications marketplace as a whole — which is more competitive than ever before, and which is moving away from artificial service-category distinctions based on geographic boundaries — I am frankly puzzled by the argument that we need to adopt an intrusive and backward-looking regulatory requirement for CMRS carriers.”).

With regard to paragraph 009.02A6, see the Response to 6 below. With regard to paragraph 009.02A7, see the Response to 2(g) above.

6. A common carrier designated as an eligible telecommunications carrier shall provide the following to the Commission:

a. A progress report on its five-year service quality improvement plan, including maps detailing its progress toward meeting its plan targets, an explanation of how much universal service support was received and how it was used to improve signal quality, coverage, or capacity, and an explanation regarding any network improvement targets that have not been fulfilled. The information shall be submitted at the wire center level;

As discussed more fully in the response to 2(f) above, the Commission should not adopt the unworkable 5-year plan requirement; accordingly, the Commission should not adopt any corresponding reporting requirements relating to the 5-year plan requirement.

There are no valid criteria for evaluating the adequacy or accuracy of such plans. Regulators should not be in the position of evaluating carriers' network designs. Carriers cannot be punished for failing to meet benchmarks established in a five-year plan when the purported "failure" is due to nothing more than a change in plans in response to changed market conditions and realities. Reported results might often vary from the formal plan because network deployment decisions necessarily change over time in response to market signals and pressures.

In addition, the FCC's new application and annual certification requirements fail to recognize that Section 254(e) of the Communications Act requires only that ETCs use support "for the provision, maintenance, and upgrading of facilities and services for which the support is intended." [24/](#) The statute does not limit the use of USF support to incremental capital expenditures designed to increase network coverage, signal strength, and capacity throughout a designated service area. The Commission should recognize that other investments and

[24/](#) 47 U.S.C. § 254(e).

expenditures do qualify for support, and should continue to allow both incumbents and CETCs to use support for operating expenses, depreciation costs for capital expenditures incurred in the past, and associated overhead attributable to the costs of supported facilities and services.

b. Detailed information on any outage of at least 30 minutes in duration for each service area in which an eligible telecommunications carrier is designated for any facilities it owns, operates, leases, or otherwise utilizes that potentially affect (a) at least ten percent of the end users served in a designated service area; or (b) a 911 special facility, as defined in 47 C.F.R. §4.5(e). Specifically, the eligible telecommunications carrier's annual report must include information detailing: (a) the date and time of onset of the outage; (b) a brief description of the outage and its resolution; (c) the particular services affected; (d) the geographic areas affected by the outage; (e) steps taken to prevent a similar situation in the future; and (f) the number of customers affected;

The Commission should not require these reports from ETCs on an annual or more frequent basis. This requirement is duplicative of existing FCC reporting obligations.

c. The number of requests for service from potential customers within the eligible telecommunications carrier's service areas that were unfulfilled during the past year. The carrier shall also detail how it attempted to provide service to those potential customers;

Sprint does not object to providing this information.

d. The number of complaints per 1,000 handsets or lines;

Sprint believes this is unnecessary because existing reporting procedures are workable and sufficient.

e. A certification that is complying with applicable service quality standards and consumer protection rules;

See Response to 2(h) above.

f. A certification that the carrier is able to function in emergency situations as set forth in §54.2019a)(2) and any applicable Commission rules;

See response to 2(g) above.

g. A certification that the carrier is offering a local usage plan comparable to that offered by the incumbent LEC in the relevant service areas; and

See response to 2(i) above.

h. A certification that the carrier acknowledges that the Commission may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.

See response to 2(j) above.

Respectfully submitted,

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